IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3048 OF 2004.

Ms.Sheetal Jaisingh. ... Petitioner.

V/s.

The Worli Hill Estate
Co operative Housing Society
Ltd. and others. ... Respondents.

Ms.Lakshmi Murali for the petitioner.

S.Sahastrabudhe h/f G.S.Godbole i/b.
Auroma Law for respondent No.1.

Ms.Mamta Sadh, AGP for respondent Nos.2 to 4.

CORAM: V.C.DAGA, J.

DATED: 6th February 2007.

P.C.:

. When this matter was called out for hearing, Ms.Lakshmi Murali appeared for the petitioner; whereas the advocate on record appearing for respondent No.1 chose to remain absent.

2. Mr.Sahastrabudhe, who claimed to be the advocate for respondent No.1 (without filing vakalatnama or memo of appearance on record) prayed for adjournment since Mr.Godbole, Advocate was to lead him and that he was busy in another

Court. Engagement of the counsel in another Court could not be a ground for adjournment. The prayer for adjournment made on behalf of respondent-society was, thus, rejected. Incidentally it may be mentioned that yesterday i.e. on 5th February, 2007, this matter was called out. Nobody was present on behalf of the respondent-society, consequently, it was adjourned for a day. That is how this matter has appeared on board today.

3. Heard learned counsel Mr.Lakshmi Murali for the petitioner, who contends that the impugned order is a cryptic order exhibiting complete non-application of mind. It suffers from perversity for want of independent application of mind to the issues involved. She, thus, prayed for setting aside impugned orders and remand for fresh consideration.

4. Mr.Sahastrabudhe, learned counsel for respondent NO.1, when called upon to make submissions on behalf of respondent-society, in reply submitted that it was open to the petitioner to file documents before the revisional authority. Since no such documents were filed by the petitioner, no indulgence should be shown by this Court in favour of the petitioner.

5. On being asked as to how the respondent-society supports the findings recorded by the revisional authority, he could not make any submission for want of brief and again prayed for adjournment. Having already rejected the prayer for adjournment, there was no question of entertaining the same prayer once again. He, thus, left the matter to the Court.

6. Having heard learned counsel for the petitioner and the submissions made by Mr.Sahastrabudhe, the order of the revisional authority is very sketchy, cryptic and perfunctory order. The revisional authority relied upon the observations made by the Deputy Registrar in his order saying that the applicant/ petitioner did not furnish documents and did not forward her application dated 20th October 2000 along with copy of the sale-deed. That in letter dated 18th December 2000, the applicant has claimed to be a power of attorney holder and that power of attorney could not be entertained. The said findings of the lower authority were reiterated by the revisional authority once again.

7. Learned counsel for the petitioner, from Exh.‘B’ i.e. application dated 20th October 2000, rightly pointed out that Form No.21(1) was duly signed by the transferor Mr.D.Nath and that Form No.22 was signed by the transferee Ms.Sheetal Jaisingh. That Form No.24 was again signed by Mr.D.Nath. Under these circumstances, learned counsel for the petitioner rightly urged that the observations made by the revisional authority as well as by Deputy Registrar are unsustainable.

8. Mr.Sahastrabudhe, learned counsel appearing for respondent No.1 was unable to point out as to which documents were submitted to the society and how they did not comply with the requirement of the byelaws.

9. In the above circumstances, it is very clear that none of the authorities have applied their mind to the facts and circumstances of the case and went on to pass the impugned order in a perfunctory manner.

10. Ms.Lakshmi Murali during the course of hearing submits that the registered document,

viz., agreement was submitted to the society and that the petitioner is ready and willing to comply with all other legal formalities of the society and produce all necessary documents, for admitting the petitioner as member of the society.

11. In the above view of the matter, the impugned order dated 31st July, 2004 together with order dated 10th December, 2001, to the extent it is adverse to the petitioner, are set aside. The appeal filed by the petitioner under 22(2) of the Maharashtra Co-operative Societies Act, 1060 is remanded back and restored to the file of the Deputy Registrar with direction to hear and decide appeal afresh after hearing both parties following principles of natural justice.

12. It would be open to the petitioner to file all necessary documents as may be required or as may be indicated by the respondent-society to comply with the byelaws of the society and provisions of the Act and rules relating to the admission of membership. The Deputy Registrar may permit the applicant to file such documents. As a matter of fact, he is expected to assist the parties to solve their problems and not deal with

the matter mechanically. Needless to mention that all rival contentions are kept open.

13. The Deputy Registrar is directed to hear and decide the appeal as expeditiously as possible, at any rate, within three months from the date of receipt of copy of this order. Petitioner undertakes to produce copy of this order before the Deputy Registrar. At the same time, learned A.G.P. appearing for the State undertakes to communicate this order to the said authority.

14. In the result, petition is allowed. Rule is made absolute disposed of in terms of this order with no order as to costs.

(V.C.DAGA, J.)